saviour of design concocted by the accused and the offending exhibits were in fact found in his said room, yet it would still leave in the Court's mind serious doubts as to whether the accused had possession and control of the offending exhibits, bearing in mind that the said room was accessible to other members of the family. I am also not persuaded that the prosecution had succeeded in dislodging the evidence of the accused and DW1 that the key (P7) was at all material times hung outside the door and that the said room was accessible to other members of the family including at least four other male siblings of the accused. As the cupboard in which the offending exhibits were allegedly found had no lock, this cupboard was also accessible. To illustrate, if, e.g. the cupboard was locked and the keys to this cupboard was found on the person of the accused, such evidence could be damning on the accused.

Furthermore, even if the character named Lau Pi ought to be discounted, the defence could be regarded as having - besides taking advantage of the infirmities in the prosecution case in regard to accessibility to the room by other members of his family - gone further and have sought to show that there was also access by this Lau Pi, which they are not in law obliged to do.

To summarise, the accused's defence is not that of a mere denial which is insufficient to reasonably dislodge the prosecution evidence. (See *D.A. Duncan v. PP* [1980] 2 MLJ 195 FC and *PP v. Ling Tee Huah* [1982] 2 MLJ 324).

For the above reasons I hold that the accused has on the balance of probability discharged all the presumptions raised by the prosecution at the end of the prosecution case and I therefore acquit and discharge the accused.

In postlude, I must observe that it is to the learned DPP's credit that he had conducted this case fairly and competently despite the aforesaid infirmities, considering the material that he had before him.

**PUBLIC PROSECUTOR**

**v.**

**ZAINAL ABIDIN BIN MAT SHARIF**

HIGH COURT, TAIPING
DATO' HAJI ABDUL MALIK BIN HAJI ISHAK JC
[CRIMINAL TRIAL NO. 58-9-92]
31 DECEMBER 1993

***DANGEROUS DRUGS: Trafficking in dangerous drugs, to wit "ganja" under s. 39B(1)(a) Dangerous Drugs Act 1952 - Defence case - Whether on balance of probabilities accused has rebutted two presumptions - Defence to cast a reasonable doubt in prosecution case.***

In this case, the accused was charged for an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 for trafficking in dangerous drugs, to wit, "ganja" on 9 February 1991. At the end of the prosecution case, the Court on 6 February 1993 acquitted and discharged the accused without calling for his defence [1993] 2 CLJ 625. On appeal by the learned DPP to the Supreme Court against the acquittal, the Supreme Court on 1 November 1993 ordered the defence of the accused to be called. On 31 December 1993 after hearing the defence case, the Court acquitted and discharged the accused.

**Held:**

**[1]** On the facts, the accused has, on the balance of probabilities rebutted the presumptions, thus casting a reasonable doubt in the prosecution's case.

**[2]** The accused was acquitted and discharged.

*[Accused acquitted and discharged].*

**Cases referred to:**
*Public Prosecutor v. Mansor bin Md. Rashid & 2 Ors.* [1993] 4 CLJ 266 ***(refd)***
*Mohamad Radhi v. PP* [1992] 2 SCR 145 ***(cit)***
*Wong Swee Chin v. Public Prosecutor* [1981] 1 MLJ 212 FC ***(cit)***
*Public Prosecutor v. Lin Lian Chen* [1992] 1 AMR 46 ***(cit)***

**Legislation referred to:**
Dangerous Drugs Act 1952, s. 37(d), (da)(vi)

*For the public prosecutor - Murtazadi Amran, DPP*
*For the accused - Gurbachan Singh (Manjit Singh with him); M/s. Bachan & Kartar*

**JUDGMENT**

**Haji Abdul Malik bin Haji Ishak JC:**
The facts of the case as established during the trial are sufficiently set out and reported in [1993] 2 CLJ 625 and [1993] 1 AMR Supp Rep. 169 and I need not repeat them here. Suffice for me to say that in compliance with the order of the Supreme Court dated 1 November 1993, the defence of the accused was called.

The accused gave evidence on oath and called two other witnesses to prove firstly, that Ramli bin Jusoh or Panglima or Santokh ("Ramli bin Jusoh") was the owner of the plastic bag containing the cannabis and that he was merely an innocent and momentary carrier of the plastic bag on the basket of the bicycle (P3), and secondly, it was Ramli bin Jusoh and not he who was in possession and who was trafficking in the cannabis.

The accused narrated the events that led to his arrest on 9 February 1991 at about 11.35 p.m. in his defence. According to the accused, his role was only to introduce Mohd. Isa, Saidin and the informer to the supplier of the drugs. That fateful night, on the instructions of Ramli bin Jusoh, the accused met Mohd. Isa and Saidin by the side of the road opposite his house and demanded the money. Both Mohd. Isa and Saidin refused to hand the money to the accused until they saw the "barang". The accused then rode his bicycle and met Ramli bin Jusoh near the telephone booth and conveyed the message of both Mohd. Isa and Saidin. At that time, Ramli bin Jusoh was loading articles on motorlorry KY 8175. The accused was told by Ramli bin Jusoh to go back to Mohd. Isa and Saidin and that he (Ramli bin Jusoh) would follow suit. The accused complied. True enough, a short while later, Ramli bin Jusoh arrived on the motorlorry KY 8175 with a child sound asleep in it. According to the accused, one of the two persons (either Mohd. Isa or Saidin) asked Ramli bin Jusoh: "Mana barang?" To this Ramli bin Jusoh said: "Barang tak bawak lagilah." At this juncture, the accused went back to his house. Incidentally, this aspect of the evidence about the accused going back to his house was sufficiently established during cross-examination of the prosecution witnesses at the earlier trial. Now, returning to the defence. A short while later, the accused was called and upon his return, the accused remarked: "Apa hal lagi?" Mohd. Isa and Saidin told the accused that Panglima requested him to fetch the "barang". The accused was reluctant to do so. Mohd. Isa and Saidin pleaded with the accused to collect the "barang"; they both said:

"Pergi ambillah, tak usah takut, kami memang hendak beli".

The accused told Ramli bin Jusoh: "Hang pergilah ambil kerana barang itu hang yang punya dan hang yang tahu tempat." To this, Ramli bin Jusoh said: "Kamu pergilah di tepi jalan, simpang yang hendak masuk ke rumah saya dan di sana ada orang yang tunggu." On being re-assured and coaxed by these people, the accused relented and he rode his bicycle (P3) in the direction of Ramli Jusoh's house and upon arrival met Ghani, the attendant of Ramli Jusoh, who then placed the plastic bag in the basket of his bicycle (P3). Ghani requested the accused to leave immediately. According to the accused, he did not know nor see the contents of the plastic bag. The accused cycled to the same spot he left those people earlier on. On his return, Ramli Jusoh approached him and took the plastic bag from the basket of the bicycle (P3) and handed to either Mohd. Isa or Saidin. The accused went to his house and parked his bicycle by placing it against the wall of his house. Again, this aspect of the evidence was introduced during the earlier trial by way of cross-examination. The accused felt like urinating and was about to go to the toilet when those people called him again. The accused went to them and asked: "Apa hal lagi?" They told the accused that Ramli Jusoh requested him (the accused) to accept the money. The accused refused and told them in no uncertain terms: "Barang ini Panglima yang punya, dan dia menjual kepada awak." Once again they coaxed the accused to accept the money. The accused flatly refused. The accused told them: "Serahlah kepada Santokh. Barang itu bukan saya punya, barang itu barang Santokh." Soon thereafter the accused was arrested and he heard the sound of "Bantuan, Bantuan." The accused also heard someone uttering apologetically: "Maafkan saya Pa' Lebai, ini tugas saya."

The accused testified that the lorry driver KY 8175 was Ramli bin Jusoh who fled from the scene. The accused heard a gunshot being fired and the sound of footsteps of people running. The accused did not know who was being chased. The accused did not make any attempt to run away.

The accused testified that on 9 February 1991 he was not in possession of the cannabis. The possessor and the trafficker was Ramli Jusoh. The accused stated that he did not sell the drugs and even assisted the police to locate Ramli Jusoh's house in order to return the child that was asleep in the lorry to her mother (the wife of Ramli Jusoh). The accused stated that he mentioned in his cautioned statement the names of Santokh or Panglima or Ramli bin Jusoh to the police.

The officer from the Rehabilitation Centre in Muar, Shamsuddin bin Mohd. Said (SB2) confirmed the detention of Ramli bin Jusoh, NRIC number 4213853 by the Honourable Deputy Minister of Home Affairs at the Centre for a period of two years beginning from 7 August 1993. The order of detention with all the relevant documents were marked as exhibit D16. The photograph of Ramli bin Jusoh can be seen in D16. According to D16, the police arrested Ramli bin Jusoh on 9 June 1993.

The last defence witness was Abdul Ghani bin Taib (SB3). He testified that, in the month of February 1991, he worked as a lorry attendant for Ramli bin Jusoh for a period of 3 months. He identified the photograph of Ramli bin Jusoh in D16. He admitted that Ramli bin Jusoh was also known as Panglima or Santokh. He testified that on 9 February 1991 at about 11.00 p.m. while he was at Sungai Tinggi, Trong, Taiping, Perak he met Ramli bin Jusoh. That night the latter handed to him a package containing ganja to be given to someone. Thus, that night after 11.00 p.m. when the accused met him at Sungai Tinggi he handed the package by placing it inside the basket of the bicycle ridden by the accused and said: "Ini barangnya." He did not tell the accused the contents of the package. Prior to 9 February 1991 he had seen the accused, a roti canai maker.

It is now firmly crystallized that to constitute possession, it is necessary to establish that (a) the person had knowledge of the drugs, and (b) that the person had some form of control or custody of the drugs (*Public Prosecutor v. Mansor bin Md. Rashid & 2 Ors.* [1993] 4 CLJ 266). To prove either of these two requirements, the prosecution may proceed to rely on direct evidence or it may rely on the relevant presumptions under s. 37 of the Dangerous Drugs Act 1952 (Act 234). It is now trite law that to rely on the presumption under s. 37(d) of the Dangerous Drugs Act 1952 (Act 234), custody and control must first be established.

It is now also firmly crystallized that in cases where the prosecution adduced direct evidence, the defence, in order to secure an acquittal needs only to cast a reasonable doubt on the prosecution's case whereas in cases where the presumption is relied upon, the defence need only rebut the presumptions on the balance of probabilities (*Mohamad Radhi v. PP* [1992] 2 SCR 145). Here, the prosecution sought to rely on s. 37(d) and s. 37(da)(vi) of the Dangerous Drugs Act 1952 (Act 234).

The crucial question to ask is this: Is the defence reasonable and probable and sufficient enough to rebut the two presumptions under the Dangerous Drugs Act 1952 (Act 234) on the balance of probabilities? On proper assessment of the evidence, it is probable that the accused had no knowledge of the offending drugs in the plastic bag placed in the basket of the bicycle (P3) as he cycled to the scene of the crime.

Ramli bin Jusoh, the driver of motorlorry KY 8175 is not a fictitious character. He is alive and is living in Muar as a guest of the Rehabilitation Centre. From D16 it is clear that Ramli bin Jusoh was arrested by the police on 9 June 1993 and subsequently detained for a period of two years beginning from 7 August 1993 at the Rehabilitation Centre at Muar. D16 bore the tale that Ramli bin Jusoh had a nickname of Panglima adverted to by the accused and confirmed by Abdul Ghani bin Taib (SB3). Even the accused spoke of the nicknames of Ramli bin Jusoh as Panglima or Santokh in his cautioned statement. Yet, the learned Deputy failed to cross-examine the accused on this point. It is now crystal clear that in the absence of any challenge by a party to a material part of the evidence then that evidence is deemed to be accepted (*Wong Swee Chin v. Public Prosecutor* [1981] 1 MLJ 212 FC). No attempt was made to contradict the accused, by the learned Deputy, using the accused's cautioned statement - let alone an attempt to impeach the credit of the accused. D16 also explained the reasons for the detention of Ramli bin Jusoh at the Rehabilitation Centre.

It was in evidence that Mohd. Isa and Saidin spoke to Ramli bin Jusoh at the scene while waiting for the arrival of the accused on his bicycle. D16 shows the tireless efforts of the

anti-narcotics division of the Taiping police station. Surely the police with its vast resources at its disposal could easily nab Ramli bin Jusoh and pin him down with the accused. From D16 a startling discovery is noted. The investigating officer of this case, Inspector Syed Talib, had interviewed Ramli bin Jusoh on 18 December 1993. Why was this done after the first trial was completed on 3 February 1993 (see the record of appeal at p. 137)? Would it not be fair to charge the accused jointly for trafficking with Ramli bin Jusoh, who was still at large then? Even Mohd. Isa, Saidin and the accused expected Ramli bin Jusoh upon his arrival at the scene in the motorlorry KY 8175 to carry the drugs. According to Saidin, the accused asked: "Mana barang itu?" The lorry driver (this must be Ramli bin Jusoh) replied: "Ada sana juga, tidak bawa mari." Mohd. Isa was then seen boarding the motorlorry and made a thorough check but to no avail and dejectedly Mohd. Isa said: "Kalau begini saya tidak mahu beli, saya mahu balik." It must be borne in mind that there is no duty on the defence to corroborate its defence. In this case, the accused successfully corroborated his defence through Shamsuddin bin Mohd. Said, Abdul Ghani bin Taib and by way of documentary corroboration in the form of D16.

It is my finding of fact, after reviewing the totality of the evidence both from the prosecution and the defence that the person who had possession and was trafficking in dangerous drugs, to wit, 3516 grammes of cannabis on the date and time in question as per the charge was none other than Ramli bin Jusoh. It is also my finding of fact that the accused was an innocent and momentary carrier of the plastic bag on the basket of the bicycle (P3).

Lastly, in his testimony the accused stated that he never touched, nor held the plastic packet containing the ganja. This was confirmed by Abdul Ghani bin Taib. The latter gave evidence to the effect that he placed the plastic packet inside the basket of the bicycle (P3) without telling the accused that it contained ganja. On arrival at the scene, it was Ramli bin Jusoh that took the plastic packet from the basket of the bicycle (P3) and handed it to either Mohd. Isa or Saidin. The non-handling of the plastic packet by the accused was further corroborated by Lance Corporal Abu Hanifa who tried to lift fingerprints on exhibits P10A and P10B but was not successful. There were, however, traces of fingerprints but Lance Corporal Abu Hanifa could not positively identify them (*Public Prosecutor v. Lin Lian Chen* [1992] 1 AMR 46 p. 253 SC and *Public Prosecutor v. Mansor bin Md. Rashid & 2 Ors. (supra)*).

I am satisfied that on the facts, the accused has, on the balance of probabilities rebutted these two presumptions, thus casting a reasonable doubt in the prosecution's case: *Mohamad Radhi v. PP (supra)*. I have no choice but to acquit and discharge the accused.